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Investigation
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MEMORANDUM

DATE: August 23, 2002

TO: Faryar Shirzad
Assistant Secretary for
Import Administration

FROM: Richard W. Moreland
Deputy Assistant Secretary, Group I
Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Carbon and Certain Alloy Steel Wire Rod from Canada

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Background

On February 8, 2002, the Department of Commerce ("the Department") published the preliminary determination in this investigation. See Preliminary Affirmative Countervailing Duty Determination: Carbon and Certain Alloy Steel Wire Rod from Canada, 67 FR 5984 (February 8, 2002) ("Preliminary Determination"). The "Analysis of Programs" and "Subsidies Valuation Information" sections below describe the subsidy programs and the methodologies used to calculate the benefits from these programs. We have analyzed the comments submitted by the interested parties in their case and rebuttal briefs in the "Analysis of Comments" section below, which also contains the Department's responses to the issues raised in the briefs. We recommend that you approve the positions we have developed in this memorandum. Below is a complete list of the issues in this investigation for which we received comments and rebuttal comments from parties:

Comment 1–Post-Privatization Treatment of Ispat Sidbec's Pre-Privatization Subsidies
Comment 2–Application of the Department's Change-in-Ownership Methodology
Comment 3–Equityworthiness and Creditworthiness
Comment 4–Countervailability of 1988 Debt-to-Equity Conversion and 1986-1992 Grants

Comment 5–1986-1992 Grants
Comment 6–Project Bessemer
Comment 7–Ispat Sidbec's Freight Revenue
Comment 8–Ispat Sidbec's AUL
Comment 9–Ispat Inland's Sales
Comment 10–Deitcher Brothers Sales
Comment 11–Calculation of Deposit Rate
Comment 12–Stelco's Energy Efficiency and Conservation Programs
Comment 13–New Subsidy Allegations

Changes in Ownership

On February 2, 2000, the U.S. Court of Appeals for the Federal Circuit ("CAFC") in Delverde Srl v. United States, 202 F.3d 1360, 1365 (Fed. Cir. 2000), reh'g granted in part (June 20, 2000) ("Delverde III"), rejected the Department's change-in-ownership methodology as explained in the General Issues Appendix of the Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria, 58 FR 37217, 37268-37269 (July 9, 1993). The CAFC held that "the {Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 ("the Act")} does not allow Commerce to presume conclusively that the subsidies granted to the former owner of Delverde's corporate assets automatically 'passed through' to Delverde following the sale. Rather, the Tariff Act requires that Commerce make such a determination by examining the particular facts and circumstances of the sale and determining whether Delverde directly or indirectly received both a financial contribution and benefit from a government." Delverde III, 202 F.3d at 1364.

Pursuant to the CAFC finding, the Department developed a new change-in-ownership methodology. This new methodology was first announced in a remand determination on December 4, 2000, and was also applied in Grain-Oriented Electrical Steel from Italy; Final Results of Countervailing Duty Administrative Review, 66 FR 2885 (January 12, 2001) (remanded on other grounds in Acciai Speciali Terni S.p.A. and Acciai Speciali Terni USA v. United States, 206 F.Supp. 2nd 1344 (Court of International Trade ("CIT") 2002), affd., Slip. Op. 2002-82 (CIT 2002) ("AST - GOES")). We have applied this methodology in analyzing the changes in ownership in this determination.

The first step under this methodology is to determine whether the legal person (entity) to which the subsidies were given is, in fact, distinct from the legal person that produced the subject merchandise exported to the United States. If we determine the two persons are distinct, we then analyze whether a subsidy has been provided to the purchasing entity as a result of the change-in-ownership transaction. If we find, however, that the original subsidy recipient and the current producer/exporter are the same person, that person benefits from the original subsidies, and its exports are subject to countervailing duties to offset those subsidies. In other words, we will determine that a "financial contribution" and a "benefit" have been received by the "person" under investigation. Assuming that the original subsidy has not been fully amortized under the

Department's normal allocation methodology as of the beginning of the period of investigation ("POI"), the Department would continue to countervail the remaining benefits of that subsidy.

In making the "person" determination, where appropriate and applicable, we analyze factors such as (1) continuity of general business operations, including whether the successor holds itself out as the continuation of the previous enterprise, as may be indicated, for example, by use of the same name, (2) continuity of production facilities, (3) continuity of assets and liabilities, and (4) retention of personnel. No single factor will necessarily provide a dispositive indication of any change in the entity under analysis. Instead, the Department will generally consider the post-sale person to be the same person as the pre-sale person if, based on the totality of the factors considered, we determine the entity in question can be considered a continuous business entity because it was operated in substantially the same manner before and after the change in ownership.

We have determined that Ispat Sidbec, Inc. ("Ispat Sidbec") is the only respondent to have undergone a change in ownership and, therefore, have limited our analysis to this company.

In 1994, Sidbec, a corporation wholly owned by the Government of Quebec ("GOQ"), sold all the shares of its subsidiary, Sidbec-Dosco, to Ispat Mexicana S.A. de C.V. The company that was purchased is known today as Ispat Sidbec. After applying our "person" analysis to the facts and circumstances of the privatization of Sidbec-Dosco, we determine that the pre-sale and post-sale entities are not distinct persons. Specifically, Ispat Sidbec continued the same general business as Sidbec-Dosco, the manufacture of steel products including steel wire rod. Although Ispat Sidbec to some extent refocused and shifted its product line since the privatization, the products are essentially the same. The Sidbec name has been retained and used continually since the privatization. After its sale, Sidbec-Dosco Inc. became Sidbec-Dosco (Ispat) and later, Ispat Sidbec, Inc. As to the second factor, continuity of production facilities, although Ispat Sidbec has closed one facility since it purchased Sidbec-Dosco, it has maintained the facilities at Contrecoeur, Longueill, and Montreal, Quebec. The volume of steel produced immediately before and after the privatization has changed only minimally. Next, we compared the assets and liabilities of Sidbec-Dosco to those of Sidbec-Dosco (Ispat), and found them to be approximately the same. Last, we reviewed information about workforce retention and concluded that the post-privatization Sidbec-Dosco (Ispat) retained personnel, including management.

Ispat Sidbec and the GOQ have argued that the Department's "person" analysis is not consistent with U.S. law and World Trade Organization ("WTO") decisions regarding changes in ownership, but that even if the Department continues to apply this analysis, it should find that Ispat Sidbec is not the same "person" as Sidbec-Dosco. We have rejected these arguments, see Comments 1 and 2 below.

Therefore, we continue to find that the subsidies provided to Sidbec prior to the privatization of its wholly owned subsidiary Sidbec-Dosco continued to benefit Sidbec-Dosco (Ispat), later Ispat Sidbec, during the POI.

Subsidies Valuation Information

Allocation Period

Pursuant to 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to the average useful life ("AUL") of the renewable physical assets used to produce the subject merchandise. 19 CFR 351.524(d)(2) creates a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (the "IRS Tables"). For wire rod, the IRS Tables prescribe an AUL of 15 years.

To rebut the presumption in favor of the IRS tables, the Department must find that the IRS tables do not reasonably reflect the company-specific AUL or the country-wide AUL for the industry in question, and that the difference between the company-specific or country-wide AUL and the IRS tables is significant. (See 19 CFR 351.524(d)(2)(i).) For this difference to be considered significant, it must be one year or greater. (See 19 CFR 351.524(d)(2)(ii).)

Ispat Sidbec has claimed that its AUL should differ from the presumed 15-year AUL. The petitioners have claimed that the AULs for Ispat Sidbec and Ivaco, Inc. ("Ivaco") should differ from the presumed 15-year AUL, based on information from these companies' recent financial statements. Because Ivaco received no non-recurring subsidies in the period proposed by the petitioners, we did not further analyze Ivaco's AUL.

The petitioners calculated a company-specific AUL for Ispat Sidbec using recent financial data. The Department rejected this AUL in the Preliminary Determination because the AUL calculated by Ispat Sidbec for the Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Canada, 62 FR 54972 (October 22, 1997) ("1997 Wire Rod") used data which is more contemporaneous with the bestowal of the subsidies than the information used by the petitioners. (See February 1, 2002 "Ispat Sidbec's AUL" memorandum to the file for more information.)

Subsequent to the Preliminary Determination, Ispat Sidbec calculated a new company-specific AUL, using data from both the Department's AUL calculation in 1997 Wire Rod and additional data for years subsequent to 1997 Wire Rod. The Department has rejected this company-specific AUL for Ispat Sidbec because of distortions and, therefore, we will use the 15-year AUL from the IRS tables to allocate the subsidies. See Comment 8 below for further discussion.

Attribution of Subsidies

19 CFR 351.525(b)(6)(ii)-(v) direct that the Department will attribute subsidies received by certain affiliated companies to the combined sales of those companies. Based on our review of the responses, we find that "cross-ownership" exists with respect to certain companies, as described below, and have attributed the subsidies received by these companies accordingly.

Ispat Sidbec: Ispat Sidbec has responded on behalf of Ispat Sidbec, Inc. and two of its subsidiaries, Sidbec-Feruni (Ispat), Inc. (100 percent owned) and Deitcher Brothers (1992), Inc. ("Deitcher Brothers") (50 percent owned). Both of these subsidiaries provide processed scrap to Ispat Sidbec for use in the production of slabs and billets which, in turn, are used in the production of the subject merchandise.

Although Ispat Sidbec responded on behalf of Deitcher Brothers, Ispat Sidbec argued at the Preliminary Determination that cross-ownership does not exist between these two companies because Ispat Sidbec does not have majority voting ownership and does not direct the operations of Deitcher Brothers. In the Preliminary Determination, we agreed with Ispat Sidbec that cross-ownership does not exist between the two companies, but stated that we did not have sufficient information to exclude Deitcher Brothers' sales from the sales denominator. Ispat Sidbec changed its position in its case brief, arguing that cross-ownership does exist between Deitcher Brothers and Ispat Sidbec. However, based on Ispat Sidbec's description of the voting rights of the owners (which is proprietary), we have continued to find that cross-ownership (see 19 CFR 351.525(b)(6)(vi)) does not exist between Ispat Sidbec and Deitcher Brothers. See Comment 10 below for further discussion. Thus, pursuant to 19 CFR 351.525(b)(6)(i), we did not include Deitcher Brothers' sales (which we collected subsequent to the Preliminary Determination) in the denominator used to calculate the ad valorem subsidy rate for Ispat Sidbec.

We continue to find that cross-ownership within the meaning of 19 CFR 351.525(b)(6)(vi) exists between Ispat Sidbec and Sidbec-Feruni (Ispat) Inc., and the subsidies received by them have been attributed to their combined sales.

Ivaco: Ivaco has responded on behalf of Ivaco Inc. (including its divisions) and Ivaco Rolling Mills Limited Partnership ("IRM"). IRM is virtually 100 percent owned by Ivaco Inc. and produces unprocessed wire rod which it sells in processed and unprocessed forms. For sales of processed wire rod, the processing is done by Sivaco Ontario Processing Division ("Sivaco Ontario") or Sivaco Quebec, both divisions of Ivaco Inc. Sivaco Ontario also sells processed wire rod using inputs supplied by IRM and others. Sivaco Quebec occasionally sells the subject merchandise. Based on the extent of the relationship between Ivaco Inc. and IRM, we continue to find that cross-ownership exists within the meaning of 19 CFR 351.525(b)(6)(vi) and the subsidies received by them have been attributed to their combined sales. See 19 CFR 351.525(b)(6)(ii).

Ivaco also reported that Bakermet, Inc. ("Bakermet"), a company that was 50 percent owned by Ivaco until November 23, 2000, supplied IRM with a small amount of scrap that was used by IRM to produce billets, an input into the subject merchandise. Ivaco claims that it cannot report more information about Bakermet, beyond the 1998 and 1999 financial statements it has submitted, pointing to the fact that Bakermet's financial results were never combined with those of Ivaco. The Department verified this claim. Furthermore, based on the record of this proceeding and verification, we found no evidence that Bakermet received any subsidies. Thus, even if we were to combine Bakermet with Ivaco due to cross-ownership during a portion of the

POI, it would not change our findings.

Stelco: Stelco has responded on behalf of Stelco, Inc., Stelco-McMaster Ltee. Quebec (Stelco-McMaster), Wabush Mines Nfld and Quebec (Wabush Mines), Fers et Metaux Recycles Ltee. (Fers et Metaux), and Stelwire, Ltd. (Stelwire). Stelco, Inc. produces the subject merchandise, using inputs from Stelco-McMaster (billets) and Wabush Mines (iron ore). Additionally, Fers et Metaux supplies recycled scrap to Stelco-McMaster. Stelwire sold some subject merchandise to the United States and Canada. Stelco-McMaster and Stelwire are 100 percent owned by Stelco, Inc. Stelco-McMaster owns 50 percent of Fers et Metaux. Stelco, Inc. owns 37.87 percent of Wabush Mines.

In the Preliminary Determination, we found that cross ownership did not exist between Stelco Inc. and Wabush Mines, but that cross ownership did exist between Stelco Inc. and Fers et Metaux. Given our final determination that neither Stelco nor any of its affiliates or partially-owned subsidiaries received any countervailable subsidies during the POI, we have not made any final determination with regard to the cross ownership of either Wabush Mines or Fers et Metaux, as a finding of cross ownership in either case would have no practical effect on the outcome of this investigation.

Equityworthiness

Section 771(5)(E)(i) of the Act and 19 CFR 351.507(a)(1) state that, in the case of a government-provided equity infusion, a benefit is conferred if an equity investment decision is inconsistent with the usual investment practice of private investors. 19 CFR 351.507(a)(2) provides that the first step in determining whether an equity investment decision is inconsistent with the usual investment practice of private investors is examining whether, at the time of the infusion, there was a market price for similar newly-issued equity. If so, the Department will consider an equity infusion to be inconsistent with the usual investment practice of private investors if the price paid by the government for newly-issued shares is greater than the price paid by private investors for the same, or similar, newly-issued shares.

If actual private investor prices are not available, then, pursuant to 19 CFR 351.507(a)(3)(i), the Department will determine whether the firm funded by the government-provided infusion was equityworthy or unequityworthy at the time of the equity infusion. In making the equityworthiness determination, pursuant to 19 CFR 351.507(a)(4), the Department will determine that a firm is equityworthy if, "from the perspective of a reasonable private investor examining the firm at the time the government-provided equity infusion was made, the firm showed an ability to generate a reasonable rate of return within a reasonable period of time." To do so, the Department may examine the following factors: 1) objective analyses of the future financial prospects of the recipient firm; 2) current and past indicators of the firm's financial health; 3) rates of return on equity in the three years prior to the government equity infusion; and 4) equity investment in the firm by private investors.

19 CFR 351.507(a)(4)(ii) further stipulates that the Department will "normally require from the respondents the information and analysis completed prior to the infusion, upon which the government based its decision to provide the equity infusion." Absent an analysis containing information typically examined by potential private investors considering an equity investment, the Department will "normally determine that the equity infusion received provides a countervailable benefit." This is because, before making a significant equity infusion, it is the usual investment practice of private investors to evaluate the potential risk versus the expected return, using the most objective criteria and information available to the investor.

In 1997 Wire Rod, we determined that Sidbec was unequityworthy in 1988 and that the 1988 conversion of Sidbec's debt to equity was a countervailable subsidy. In the instant investigation, the GOQ provided financial information regarding Sidbec-Dosco's equityworthiness. However, we have not analyzed that information. Instead, following the approach adopted by the Department in 1997 Wire Rod, we believe that Sidbec is the proper focus of our equityworthiness analysis. (See 62 FR 54972, 54983-84). See Comment 3, below, for further discussion.

Because we have received no new information regarding Sidbec's equityworthiness, we continue to find that Sidbec was unequityworthy at the time of the 1988 debt-to-equity conversion.

Creditworthiness

The examination of creditworthiness is an attempt to determine if the company in question could obtain long-term financing from conventional commercial sources. See 19 CFR 351.505(a)(4). According to 19 CFR 351.505(a)(4)(i), the Department will generally consider a firm to be uncreditworthy if, "based on information available at the time of the government-provided loan, the firm could not have obtained long-term loans from conventional commercial sources." In making this determination, according to 19 CFR 351.505(a)(4)(i), the Department may examine the following four types of information: 1) the receipt by the firm of comparable commercial long-term loans; 2) present and past indicators of the firm's financial health; 3) present and past indicators of the firm's ability to meet its costs and fixed financial obligations with its cash flow; and 4) evidence of the firm's future financial position. With respect to item number one, it is the Department's practice not to consider in the case of a government-owned firm the receipt of comparable commercial loans as being dispositive of a firm's likely ability to obtain long-term commercial credit. This is because, in the Department's view, "in the case of a government-owned firm, a bank is likely to consider that the government will repay the loan in the event of default." See Countervailing Duties; Final Rule, 63 FR 65348, 65367 (November 28, 1998).

In the instant investigation, the GOQ has provided financial information regarding Sidbec-Dosco's creditworthiness. However, we have not analyzed that information. Instead, following the approach adopted by the Department in 1997 Wire Rod, we continue to find that Sidbec is the proper focus of our creditworthiness analysis. (See 62 FR 54972, 54987). See Comment 3, below, for further discussion.

Because we have received no new information regarding Sidbec's creditworthiness, we continue to find that Sidbec was uncreditworthy from 1986 - 1992.

Discount Rates

The only non-recurring, allocable subsidies in this determination are the 1988 conversion of Sidbec's debt to equity and grants received by Sidbec between 1986 and 1992. As discussed above, we continue to find Sidbec to be uncreditworthy in those years.

In accordance with 19 CFR 351.524(d)(3)(ii), the discount rate for companies considered uncreditworthy is the rate described in 19 CFR 351.505(a)(3)(iii). To calculate that rate, the Department must specify values for four variables: (1) the probability of default by an uncreditworthy company; (2) the probability of default by a creditworthy company; (3) the long-term interest rate for creditworthy borrowers; and (4) the term of the debt.

For the probability of default by an uncreditworthy company, we have used the average cumulative default rates reported for the Caa- to C-rated category of companies as published in Moody's Investors Service: "Historical Default Rates of Corporate Bond Issuers, 1920-1997" (February 1998). For the probability of default by a creditworthy company, we used the cumulative default rates for investment grade bonds as published in Moody's Investors Services: "Statistical Tables of Default Rates and Recovery Rates" (February 1998). For the commercial interest rate charged to creditworthy borrowers, we used the "Average Weighted Yield (ScotiaMcLeod) - All Corporate Long-Term" from the Bank of Canada's website. For the term of the debt, we used the AUL period from the IRS tables, as the grants and equity benefits are being allocated over that period.

Analysis of Programs

I. Programs Determined To Be Countervailable

A. 1988 Debt-to-Equity Conversion

In 1988, the GOQ converted four Sidbec debt instruments it held into equity. According to the GOQ, converting Sidbec's debt allowed Sidbec to invest in Sidbec-Dosco, thereby increasing the value of that company and the likelihood that Sidbec-Dosco could be successfully privatized. The amount of debt converted totaled C$81,559,630, reflecting the principal and interest outstanding on the debt as of December 23, 1988.

We determine that this debt-to-equity conversion is a countervailable subsidy. The investment was a direct transfer of funds from the GOQ to Sidbec within the meaning of section 771(5)(D)(i) of the Act. As discussed above and in Comment 3 below, we have determined that

Sidbec was unequityworthy. Consequently, the debt-to-equity conversion was inconsistent with the usual investment practice of private investors, including the practice regarding the provision of risk capital in Quebec, and conferred a benefit in the amount of the conversion. See section 771(5)(E)(i) of the Act and 19 CFR 351.507(a)(6). Finally, the debt-to-equity conversion was limited to Sidbec/Sidbec-Dosco and, hence, specific within the meaning of 771(5A)(D)(i). See Comment 4 below.

To calculate the benefit, we have allocated the amount of debt and accumulated interest that was converted over the AUL from the IRS tables. We divided the amount attributed to the POI by Ispat Sidbec's total sales (excluding goods which undergo substantial transformation outside Canada). On this basis, we determine the net countervailable subsidy during the POI to be 0.81 percent *ad valorem*.

B. GOQ Grants to Sidbec Between 1986 and 1992

In 1976, Sidbec entered into a joint venture, Normines JV, to mine iron ore. By 1983, Sidbec was forced to borrow money to finance the JV's operations. Sidbec borrowed additional funds in 1984 in connection with the Normines JV. Between 1984 and 1992, the GOQ reimbursed Sidbec for all payments of principal and interest on these loans.

We determine that the GOQ's grants reimbursing Sidbec for the loan costs associated with the Normines JV are countervailable subsidies. The grants were a direct transfer of funds from the GOQ to Sidbec within the meaning of section 771(5)(D)(i) of the Act, providing a benefit in the amount of the grants (see 19 CFR 351.504(a)). Also, the grants were limited to Sidbec and, hence, specific within the meaning of 771(5A)(D)(i). See Comment 5 below.

To calculate the benefit, we have allocated the grants over the AUL from the IRS tables. We divided the amount for the POI by Ispat Sidbec's total sales (excluding goods which undergo substantial transformation outside of Canada). On this basis, we determine the net countervailable subsidy during the POI to be 5.80 percent *ad valorem*.

II. Programs Determined to Be Not Countervailable

A. Tax Credit for Mining Incentives for Stelco

Pursuant to Canada's federal corporate income tax, companies are permitted to take a resource allowance in lieu of deductions for Crown royalties, provincial mining taxes and other charges related to oil and gas or mining production. The allowance equals 25 percent of a taxpayer's annual resource profits, computed after operating costs, but before the deduction of exploration expenses, development expense, earned depletion and interest expenses. Resource allowances are also deductible from income for purposes of calculating income taxes owed in certain provinces.

According to Stelco, the resource allowance represents the reduction in the mineral contents of the reserves from which the mineral is taken. Therefore, Stelco claims, the resource allowance is equivalent to a depletion allowance.

Stelco points to Final Affirmative Countervailing Duty Determination; Iron Ore Pellets from Brazil, 51 FR 21961 (June 17, 1986) ("Iron Ore Pellets"), arguing that the resource allowance is not countervailable. Stelco also states that even if the resource allowance were found to be countervailable, the benefit to Stelco from the federal and provincial tax savings would be a *de minimis* 0.07 percent. (See Stelco's December 3, 2001, Questionnaire Response, at page IV-28)

In Iron Ore Pellets, the Department stated, "In the past, we have found that depreciation allowances, *per se*, are not countervailable. Because the depletion allowance, which is comparable to a depreciation allowance on minerals, is part of the normal tax practice in Brazil and because there is no indication that it favors exports over domestic products, we determine the program not to be countervailable." Id. at 21963. In the instant proceeding, we find that the federal resource allowance is a normal tax practice in Canada because: (1) it is available to all resource-based companies in Canada; (2) the method for claiming the allowance is a standard schedule to the federal corporate tax form, Schedule 51; and (3) the allowance has been in place since 1976 (when it replaced an earlier resource tax abatement). Also, the resource tax allowance does not favor export over domestic sales.

Consequently, consistent with our determination in Iron Ore Pellets, we continue to find that the resource allowance taken by Stelco on its federal corporate income tax does not confer a countervailable subsidy.

Regarding the resource allowances taken on provincial corporate income taxes, Stelco has shown that the same allowance taken on its federal tax return is apportioned between the three provinces with tax authority over the company based on Stelco's allocation of business activity between the three provinces. Stelco has also submitted its tax returns for two of these three provinces, Ontario and Quebec. Those returns indicate that the resource allowance is a standard deduction, *i.e.*, may be claimed on the standard corporate tax return for those provinces. With regard to the third province, see "Programs Determined Not To Have Been Used" section, below.

Therefore, we determine that the resource allowances offered by Ontario and Quebec do not confer countervailable subsidies because they are part of the normal tax practice of these provinces and do not favor export over domestic sales.

B. Government Support for Project Bessemer

In 1989, Stelco and Sidbec-Dosco (among other Canadian steel producers) entered into a joint venture to develop a commercial scale strip caster. Co-financing for this research and development ("R&D") initiative was sought from several federal and provincial government sources, and initial approval was given by those sources. However, the original approach to the

project was abandoned and the funding agencies suspended, then withdrew, their support.

Therefore, we determine that there was no financial contribution by the Government of Canada ("GOC") or the provincial governments in Project Bessemer and, consequently, no subsidy. See section 771(5)(B)(i) of the Act.

We further note that Stelco responded that direct casting for the manufacture of hot-rolled strip was not related to the production of the subject merchandise (which is produced from billets). Thus, had any subsidies been received for R&D on direct casting, those subsidies would not be attributed to the products covered by this proceeding. See 19 CFR 351.525(b)(5). See also, Comment 6 below.

C. Government Support for Stelco's Energy Projects

In a 1999 report issued by Stelco, Industrial Energy Innovators Action Plan Report, the company stated that it had used incentives provided by the government for many of its energy projects. In response to our questionnaires, Stelco explained that the "incentive" it was describing was its honorary designation as an "Industrial Energy Innovator." It received this designation because it was successful in lowering its energy usage and increasing its efficiency.

Therefore, we determine that there was no financial contribution by the GOC in support of Stelco's energy projects and, consequently, no subsidy. See section 771(5)(B)(i) of the Act. See also, Comment 12 below.

III. Program Determined Not To Have Been Used

Resource Allowance for Newfoundland

As discussed above under "Tax Credits for Mining Incentives," Stelco was subject to taxes in three provinces during the POI. For the third province, Newfoundland, the amount of tax savings generated by the resource allowance is so small that it yields no measurable benefit.

Given the insignificance of any benefit under this program, we did not seek further information to determine whether the resource allowance in Newfoundland is a countervailable subsidy.

Analysis of Comments

Comment 1–Post-Privatization Treatment of Ispat Sidbec's Pre-Privatization Subsidies

Ispat Sidbec's Arguments:

Ispat Sidbec claims that the Department did not determine if, in fact, Ispat Sidbec received a financial contribution and a benefit, contrary to the three-part requirement established by the U.S. Court of Appeals for the Federal Circuit's decision in Delverde, SrL v. United States, 202 F.3d 1360 (Fed. Cir. Feb. 2, 2000), reh'g granted in part (June 20, 2000) ("Delverde III") and subsequent Court of International Trade ("CIT") decisions. According to Ispat Sidbec, Delverde III requires the Department to determine (1) that a financial contribution was, in fact, conferred by the program; (2) that it was, in fact, provided to the person being investigated; and (3) that it, in fact, actually provided a benefit to that person. Ispat Sidbec further notes that Section 771(5)(B) of the Tariff Act of 1930, as amended, requires the Department to determine that an authority has provided a "financial contribution ... to a person and a benefit is thereby conferred" before countervailing a program. Ispat Sidbec stresses that the Department did not make these determinations in the Preliminary Determination.

Ispat Sidbec explains that the major subsidy at issue, both in 1997 Wire Rod and the current investigation, involves the grants provided to Sidbec by the GOQ for the closure of mines at Sidbec-Normines. Ispat Sidbec reasons that the Department found the grants to be subsidies in 1997 because Sidbec avoided incurring the costs in closing Sidbec-Normines. Ispat Sidbec claims that the Department did not explain how it concluded that Ispat Sidbec, rather than Sidbec, is subsidized. However, Ispat Sidbec believes that the Department determined that the relief flowed through Sidbec to its subsidiary Sidbec-Dosco simply because the companies were members of "a group." Ispat Sidbec contends that the Department's analysis is wrong because, according to Ispat Sidbec, Sidbec-Dosco was not at the time of the grants liable for its parent's obligations. In addition, Ispat Sidbec claims that Ispat Sidbec was never part of the Sidbec group and, thus, could not benefit from the grants provided to Sidbec. Ispat Sidbec insists that "the type of subsidy at issue – relief from an obligation – cannot flow through to an entity that is not itself liable for the obligation (*i.e.*, Sidbec-Dosco) or to an entity that is not part of the group (*i.e.*, Ispat Sidbec)."

Because of these analytical flaws, Ispat Sidbec claims that the Department cannot find that the subsidies to Sidbec provided a financial contribution and a benefit to Ispat Sidbec.

Petitioners' Arguments:

Petitioners note that the Department "routinely attributes subsidies between two corporations when cross-ownership is found to exist because it is reasonable to presume that subsidies granted to one corporation may also benefit the related corporation." See the preamble to the Department's regulations, 63 FR at 65348. Petitioners also add that U.S. courts have ruled that this practice was reasonable. See Fabrique de Fer de Charleroi, S.A. v. United States, 166 F. Supp. 2d 593, 600 (CIT 2001) ("Fabrique de Fer"). Petitioners argue that this general rule extends to subsidies provided to facilitate the closure of a plant in the related group of companies

and assert that under these circumstances, the Department would consider the subsidies provided to close part of a company's operations to benefit its remaining production. See GIA, 58 FR at 37270; Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod From Italy, 63 FR 40474, 40479 (July 29, 1998). Petitioners state that U.S. courts have also upheld this practice. See British Steel Corp. v. United States, 9 CIT 85, 605 F. Supp. 286 (1985).

Department's Position:

We disagree with Ispat Sidbec's argument that in the Preliminary Determination, the Department did not properly determine that Ispat Sidbec received a benefit from the grants provided to Sidbec by the GOQ. The Department did determine that Ispat Sidbec benefitted from the grants provided to Sidbec. In the Preliminary Determination, applying the "same person" analysis, the Department examined the facts and circumstances of the privatization of Sidbec-Dosco, a wholly-owned subsidiary of Sidbec, first to determine whether Ispat Sidbec, the firm under investigation, was the same person as Sidbec-Dosco. See Preliminary Determination, 67 FR at 5987. The Department found that the pre-sale and post-sale entities are not distinct persons. On finding that they were the same person, the Department determined that the subsidies provided to Sidbec prior to the privatization of Sidbec-Dosco continued to benefit Ispat Sidbec during the POI. See Id.

We also disagree with Ispat Sidbec's claim that the Department did not explain how it concluded that Ispat Sidbec benefitted from the subsidies provided to Sidbec. As mentioned above, the Department explained in the Preliminary Determination that it used the "same person" methodology in analyzing the change in ownership of Sidbec-Dosco. Pursuant to this methodology, the first requirement is to determine whether the person to which the subsidies were given is, in fact, distinct from the person that produced the subject merchandise exported to the United States. If the two persons are distinct, the original subsidies may not be attributed to the new producer/exporter. The Department would, however, consider whether any subsidy had been bestowed upon that producer/exporter as a result of the change-in-ownership transaction.

On the other hand, if the original subsidy recipient and the current producer/exporter are demonstrated to be the same person, that person benefits from the original subsidies, and its exports are subject to countervailing duties to offset those subsidies. In other words, if the firm under investigation is the same person as the one that received the subsidies, nothing material has changed since the original bestowal of the subsidy, so that the statutory requirements for finding a subsidy are satisfied with regard to that person. In the change-in-ownership context, the existence of a "financial contribution" and a "benefit" (conferred prior to the change in ownership) depends on the "person" requirement and, specifically, whether the firm under investigation is the same person as the original, pre-change-in-ownership subsidy recipient. Where it is demonstrated that those two entities are the same "person," the Department will determine that all of the elements of a subsidy are established, i.e., the Department will determine that a "financial contribution" and a "benefit" have been received by the "person" that is the firm under investigation. Assuming that the original subsidy has not been fully amortized under the

Department's normal allocation methodology as of the POI, the Department would continue to countervail the remaining benefits of that subsidy.

In making the "person" determination, where appropriate and applicable, the Department analyzes factors such as: (1) continuity of general business operations, including whether the successor holds itself out as the continuation of the previous enterprise, as may be indicated, for example, by use of the same name, (2) continuity of production facilities, (3) continuity of assets and liabilities, and (4) retention of personnel. No single factor will necessarily provide a dispositive indication of any change in the entity under analysis. Instead, the Department will generally consider the post-sale person to be the same person as the pre-sale person if, based on the totality of the factors considered, we determine the entity in question can be considered a continuous business entity because it was operated in substantially the same manner before and after the change in ownership.

Comment 2–Application of the Department's Change-in-Ownership Methodology

Ispat Sidbec's and the GOQ's Arguments:

Ispat Sidbec argues that the full fair market value sale of Sidbec-Dosco to a private company extinguished any subsidies previously bestowed. Ispat Sidbec asserts that U.S. courts' rulings since 1997 hold that in privatization of government companies, any possible countervailable subsidies are extinguished when the privatization is at arm's length and for fair market value. See Delverde III, Allegheny Ludlum v. United States, 182 F. Supp. 2d 1357 (CIT 2002) ("Allegheny Ludlum"), GTS Industries S.A. v. United States, 182 F.Supp. 2d 1369 (CIT 2002) ("GTS"), Acciai Speciali Terni S.p.A. v. United States, Slip Op. 2002-10 (CIT 2002) ("AST - Stainless Steel Plate"), ILVA Lamiere E Tubi S.R.L. v. United States, Slip Op. 2002-32 (CIT 2002) ("ILVA"). Further, both Ispat Sidbec and the GOQ contend that the CIT has rejected the Department's "same person" privatization methodology at least four times. See Allegheny Ludlum, GTS, AST - Stainless Steel Plate, and ILVA. In addition, both claim that dispute panels of the WTO have ruled that the Department's approach to privatizations is inconsistent with the WTO Agreement on Subsidies and Countervailing Measures ("Subsidies Agreement").

Ispat Sidbec and the GOQ assert that because of the CIT's rejection of the Department's "same person" approach, the Department must analyze the Sidbec-Dosco privatization in the manner required by U.S. courts' rulings and WTO dispute panels' decisions. Ispat Sidbec claims that the rulings also advance the proposition that any possible countervailable subsidies are extinguished when the privatization is at arm's length and for fair market value. In addition, the GOQ argues that the proper privatization analysis should look at whether "the privatization occurred through an unrestricted, market-driven process, and resulted in a market price being paid for the privatized business."

The GOQ also asserts that the Department's "same person" approach "produces not only a virtually automatic assurance that the subsidy will be deemed to pass through to the new private

owner, but also an assurance that all of the subsidy will be charged against the new owner." The GOQ maintains that Delverde III explained that the Department cannot rely on any *per se* rule and that the Department must look at the facts and circumstances of the transaction, to determine if the purchaser received a subsidy, directly or indirectly, for which it did not pay adequate compensation. The GOQ notes that the Department appropriately applied the criteria laid out in Delverde III in at least two recent remand redeterminations. See Results of Redetermination Pursuant to Court Remand, Allegheny Ludlum Corp. v. United States, (June 3, 2002) and Results of Redetermination Pursuant to Court Remand, Acciai Apeciali Terni S.p.A. and Acciai Speciali Terni USA v. United States (June 3, 2002). The GOQ states that in these remand redeterminations, the Department's review of restrictions or requirements that would distort the bidding process in the privatization process was appropriate. The GOQ asserts that Sidbec-Dosco was sold through a competitive and unrestricted auction sale, formulated and administered by an independent specialist in the field, for full and fair market value, and thus the sale extinguished any prior subsidies.

Ispat Sidbec also contends that the Department erred in the Preliminary Determination when it determined that Ispat Sidbec was the same legal person as the pre-sale entity and, thus, benefitted from subsidies provided to Sidbec. Ispat Sidbec disagrees with the Department's determination and asserts that it "was based on the most cursory review of the record, and seemed to rely on a misunderstanding of the pertinent facts." Ispat Sidbec argues that under the Department's "same person" test, Ispat Sidbec is a new person and did not receive any subsidies granted to Sidbec. Thus, according to Ispat Sidbec, no countervailing duty against Ispat Sidbec is warranted. Ispat Sidbec claims that Ispat Sidbec is "materially and substantively distinct from the pre-sale entity." Specifically, Ispat Sidbec asserts that as a result of the privatization, Ispat Sidbec did not continue the general business operations of the pre-sale entity; significantly revamped the existing production facilities, shutdown some, and restarted others; dramatically changed the financial structure as well as the asset and liability structure of the company; and finally, terminated a substantial percentage of the workforce.

Petitioners' Arguments:

Petitioners argue that the Department should affirm its preliminary conclusion that Ispat Sidbec and Sidbec-Dosco are the same person because the respondents did not present any new information to significantly change the preliminary findings. In addition, petitioners note that the Department's verification confirms the facts the Department used in its "same person" finding. Petitioners also stress that the change in ownership did not result in any major changes in the general business, assets and liabilities, or personnel of Ispat Sidbec - factors relevant to the Department's "same person" analysis.

Petitioners also argue that no U.S. court has ruled that the privatization of a subsidized company at arm's length and for full fair market value extinguishes any subsidies previously bestowed. Petitioners add that recent CIT cases hold that a subsidy cannot be extinguished solely by a fair market sale, which is consistent with the Delverde III prohibition against any per se rule in the

Department's change-in-ownership analysis.

With respect to the GOQ's assertion that the Department's review of restrictions or requirements that would distort the bidding process in the privatization process in the two recent remand redeterminations was appropriate, petitioners contend that the remand redeterminations lack finality and do not govern the Department's change-in-ownership methodology in this investigation. Further, petitioners assert that the limited number of offers the GOQ received in the sale suggests "both that the bidding process was not 'competitive and open-ended' and that the GOQ placed restrictive conditions on the purchaser."

Department's Position:

We disagree with Ispat Sidbec and the GOQ that the Department's "same person" change-in-ownership methodology is not in accordance with law or in conformance with the Federal Circuit's decision in Delverde III. In several recent cases, various judges of the CIT have ruled on the Department's "same person" test. Some found that this methodology was not in accordance with law and the cases were remanded to the Department for further proceedings: see Allegheny Ludlum 182 F. Supp. 2d 1357 (CIT 2002); GTS Industries S.A. v. United States, 182 F.Supp. 2d 1369 (CIT 2002); Acciai Speciali Terni S.p.A. and Acciai Speciali Terni USA v. United States, Slip Op. 2002-10 (CIT 2002); and ILVA Lamiere E Tubi S.R.L. and ILVA S.p.A v. United States, Slip Op. 2002-32 (CIT 2002). In another case, AST - GOES, the CIT affirmed the Department's "same person" methodology.

All of these cases, however, are subject to further appeal. Therefore, notwithstanding the respondents' arguments regarding the inappropriateness of our "same person" methodology, until there is a final and conclusive decision regarding the legality of the Department's change-in-ownership methodology, we have continued to apply it for purposes of this final determination.

In addition, U.S. law, as implemented through the Uruguay Round Agreements Act ("URAA"), is fully consistent with the United States' WTO obligations. See Statement of Administrative Action (URAA), H.R. Doc. No. 103-316, Vol. 1 at 669 (1994), reprinted in 1994 U.S.C.C.A.N. 3773.

We also disagree with Ispat Sidbec's contention that the Department erred in finding that Ispat Sidbec is the same legal person as the pre-sale entity and thus, benefitted from the subsidies provided to Sidbec. As explained in the Preliminary Determination, in making the "person" determination, we examined and found that Ispat Sidbec is still in the same general business as Sidbec-Dosco, i.e., the manufacture of steel products including steel wire rod. In addition, the Sidbec name has been retained and used continually since the privatization. Further, notwithstanding Ispat Sidbec's claims of numerous changes in suppliers, product mix, customer base, employment, and composition of board of directors since privatization, we found that there are no major changes in production facilities, production volume, assets and liabilities, or personnel. See June 24, 2002, memorandum to file regarding Verification of the Questionnaire Responses of Ispat Sidbec, Inc.

Comment 3–Equityworthiness and Creditworthiness

Ispat Sidbec's and the GOQ's arguments:

The GOQ and Ispat Sidbec argue that the Department erred in its Preliminary Determination by reaffirming its decision in 1997 Wire Rod to focus its equity- and creditworthiness analyses on Sidbec rather than Sidbec-Dosco. The GOQ states that the Department verified in this proceeding that the 1988 transactions not only authorized but required a "back-to-back" transaction, such that the GOQ's debt-to-equity conversion with Sidbec would be replicated between Sidbec and Sidbec-Dosco. Therefore, the GOQ argues that Sidbec-Dosco was the intended recipient of the equity infusion and that the Department must focus on Sidbec-Dosco's equity- and creditworthiness.

Ispat Sidbec argues that there is an internal inconsistency in the Department's methodology in the Preliminary Determination because it is calculating a benefit to Ispat Sidbec, which the Department has concluded is the same person as Sidbec-Dosco, and used Ispat Sidbec's AUL, but based its creditworthiness decision on Sidbec's rather than Sidbec-Dosco's financial indicators. Ispat Sidbec concludes that use of AUL and discount rate information from two different firms in the benefit calculation formula leads to an inaccurate calculation of the benefit to the firm being investigated. Ispat Sidbec states that if the Department uses an AUL from one firm, it must use the discount rate relevant to that firm. Ispat Sidbec states that section 351.524(d)(3) confirms that the discount rate used in the calculation should be that of "the firm in question." In this instance, Ispat Sidbec states that the firm in question is Sidbec-Dosco, assuming that the Department continues to conclude that Ispat Sidbec and Sidbec-Dosco are the "same person."

The GOQ states that the record evidence shows that Sidbec-Dosco was equityworthy in the 1988 period. Specifically, the GOQ states that Sidbec-Dosco negotiated both a long-term capital lease in 1988 and a commercial short-term loan in 1989.

In the event that the Department continues to find that the 1988 equity infusion and the 1986-1992 grants are countervailable, the GOQ and Ispat Sidbec argue that the Department should not calculate the benefit of these programs using uncreditworthy benchmark interest rates. The GOQ and Ispat Sidbec argue that the existence of the commercial financing in 1988 and 1989 and the financial indicators submitted by Ispat Sidbec show that Sidbec-Dosco was creditworthy between 1986 and 1992. According to the GOQ and Ispat Sidbec, Sidbec-Dosco's financial indicators show that it had positive cash flow in 6 of the 7 years, positive earnings in 5 of the 7 years (and that the negative years were coincident with an economic recession), sufficient current assets to meet current obligations (i.e., current ratio) in 6 of the 7 years, positive return on equity from 1986 through 1990, and a low debt-to-equity ratio during the entire period.

With regard to the 1988 capital lease, Ispat Sidbec states that there is no doubt that this should be considered a conventional form of a commercial long-term loan, and that the Department itself admitted in 1997 Wire Rod, 62 FR at 54987, that a capital lease is "not unlike a typical

mortgage." Ispat Sidbec states that credit rating firms such as Standard and Poor's and Moody's frequently consider capital leases as long-term debt. Additionally, Ispat Sidbec states the Department's preamble to its regulations, 63 FR 65348, 65363, in discussing "security" and "collateral," clearly indicates that simply because a loan is secured does not disqualify it from being used as a benchmark or discount rate. Lastly, Ispat Sidbec maintains that the security on the lease was its factory rather than machinery. Ispat Sidbec states that this is risky collateral because the factory could not be moved and it would have been difficult for the lender to find a buyer for the factory in order to make the lender whole. Ispat Sidbec states that this is a good indication that the lender considered Sidbec-Dosco to be creditworthy.

Petitioners' Arguments:

The petitioners argue that, as the Department found in 1997 Wire Rod, the steel operations of Sidbec and Sidbec-Dosco were closely intertwined, such that a reasonable investor would have looked to the financial ratios of the parent company, Sidbec, to judge equityworthiness. Furthermore, the petitioners maintain that the equityworthiness analysis should focus on Sidbec because the infusion from the GOQ went directly to Sidbec, rather than Sidbec-Dosco. However, because the equity infusion into Sidbec required Sidbec to make a back-to-back equity infusion into Sidbec-Dosco, petitioners maintain that the benefit should be attributed to Sidbec-Dosco (and subsequently to Ispat Sidbec). Furthermore, the petitioners state that the record does not contain the necessary financial statements to assess Sidbec-Dosco's equity- and creditworthiness.

Department's position:

We disagree with Ispat Sidbec that it is appropriate to consider the equity- and creditworthiness of Sidbec-Dosco rather than Sidbec, in determining whether the 1988 debt-to-equity conversion was countervailable and what discount rate should be used to allocate this equity infusion and the 1986-1992 grants. While we agree that the GOQ structured the debt-to-equity transaction as a back-to-back transaction, we do not believe that this is a piece of factual information that the Department was unaware of in making its decisions regarding this program in 1997 Wire Rod. See 1997 Wire Rod, 62 FR at 54975 ("In the GOQ Act which authorized this debt conversion, Sidbec was authorized to acquire, as it later did, an equivalent amount in shares of Sidbec-Dosco Inc.") Also, as stated in 1997 Wire Rod, we believe that the Department would have treated Sidbec and Sidbec-Dosco as a single entity during the period that the 1988 equity infusion and 1986-1992 grants were made and, therefore, it is appropriate to consider the financial performance of this entity. The only new piece of information provided in this investigation is the 1989 short-term loan agreement which contained a covenant restricting Sidbec's access to Sidbec-Dosco's funds. However, as discussed in Comment 5, below, this loan agreement was only in force short-term, record information suggests that Sidbec-Dosco had substantial equity in excess of the restricted amount, and Sidbec agreed to the covenant (indicating that Sidbec had control over entering into the loan agreement in the first place). Therefore, we continue to believe that it is appropriate to consider Sidbec and Sidbec-Dosco as a single entity during the relevant time period, and accordingly, to base our equity- and creditworthiness decisions on Sidbec's consolidated financial results.

Ispat Sidbec argues that the 1988 and 1989 loan agreements indicate that Sidbec and/or Sidbec-Dosco were equity- and creditworthy. However, we note that the existence of loans is not one of the factors enumerated in section 351.507(a)(4) of the Department's regulations as indicia of equityworthiness. Additionally, the 1989 loan was short-term and, therefore, would not be considered under section 351.505(a)(4)(ii) of the Department's regulations as a determinant of creditworthiness. Lastly, while we agree with Ispat Sidbec that some might consider the 1989 capital lease to be equivalent to a commercial loan, the existence of such a loan is not dispositive evidence of creditworthiness of a government-owned firm. See section 351.505(a)(4)(ii) of the Department's regulations. Given that there is no other new information on the record since 1997 Wire Rod regarding Sidbec's creditworthiness, we do not find that the existence of this capital lease alone provides sufficient grounds to deviate from our creditworthiness decision in 1997 Wire Rod.

With regard to Ispat Sidbec's argument that the discount rate and the AUL are mismatched in the Department's allocation formula, we believe that this allocation methodology is fully consistent with the Department's regulations and practice. Sections 351.524(d)(3)(ii) and 351.505(a)(3)(iii) of the Department's regulations make clear that the discount rate for an uncreditworthy firm, is not based on the discount rate of the firm in question, but rather on economy-wide bond rates and bond default rates, as described above in the Discount Rates section. The AUL used is the AUL calculated for Ispat Sidbec. However, this AUL is calculated on Sidbec data until the 1994 privatization and, subsequently, on Ispat Sidbec data.

Accordingly, we continue to find that Sidbec was unequityworthy and uncreditworthy at the time the equity infusions and grants were given.

Comment 4–Countervailability of 1988 Debt-to-Equity Conversion and 1986-1992 Grants

Petitioners' Arguments:

The petitioners argue that the Department should continue to countervail the 1988 debt-to-equity conversion and the 1986 to 1992 grants. Concerning the 1988 debt-to-equity conversion, the petitioners state that, while the GOQ claims that the Department "misunderstood certain factual information" in 1997 Wire Rod, the Department confirmed at verification that there were no factual inaccuracies in the GOQ verification report for 1997 Wire Rod concerning the debt-to-equity conversion. The petitioners also maintain that the Department established at verification that neither Sidbec nor Sidbec-Dosco received equity capital in the three years leading up to the debt-to-equity conversion and, therefore, the "benefit component of this subsidy program has been expressly affirmed on this record."

The petitioners state that respondents put forward no new information concerning the grants provided from 1986 to 1992, but rather reiterated the arguments they made in 1997 Wire Rod. Therefore, the Department should continue to find the grants countervailable.

Ispat Sidbec's Arguments:

Ispat Sidbec argues that the privatization of Sidbec-Dosco extinguished any benefits - either because the purchase for fair market value extinguished the subsidies or because Ispat Sidbec is a new person. See Comments 1 and 2, above.

Furthermore, even if the Department continues to find a countervailable subsidy from these pre-privatization programs, Ispat Sidbec reiterates (see Comment 11 below) that there will be no countervailable benefit from the debt-to equity conversion and the 1986-1992 grants because these benefits will have been fully amortized prior to the first administrative review using the company-specific AUL.

Government of Quebec's Arguments:

The GOQ states that in 1997 Wire Rod the Department verified that the grants were tied to Normines debt but that the record is now more complete and the Department can base its analysis on additional information. The GOQ maintains that this information includes the fact that the profits of Sidbec-Dosco were off limits to Sidbec because of financial covenants protecting Sidbec-Dosco's lenders. See Comment 5, below.

Department's Position:

We have continued to countervail the 1988 debt-to-equity infusion and the 1986-1992 grants. With regard to Ispat Sidbec's arguments, as discussed in Comment 2 above, we have continued to apply our "person" methodology and find Ispat Sidbec to be the same person as Sidbec-Dosco. Additionally, we disagree with Ispat Sidbec that it is appropriate to adjust the cash deposit rate to eliminate the 1986-1992 benefits, as addressed in Comment 11, below. Lastly, with regard to Sidbec Dosco's financial covenants, we continue to find it appropriate to collapse Sidbec and Sidbec-Dosco and, therefore, to attribute the subsidies given to Sidbec to Sidbec-Dosco, as addressed in Comment 5, below. Accordingly, we have continued to countervail the 1988 debt-to-equity infusion and the 1986-1992 grants.

Comment 5–1986-1992 Grants

Government of Quebec's Arguments:

The GOQ argues that the grants it gave to Sidbec between 1986 and 1992 can be tied directly to payments of debt (principal and interest) incurred by Sidbec-Normines and, therefore, cannot have benefitted Sidbec-Dosco or Ispat Sidbec.

The GOQ also states that Sidbec-Dosco was never liable for the Normines debt because Sidbec was not allowed to borrow funds from Sidbec-Dosco due to the restrictive conditions of a loan agreement between Sidbec-Dosco and a private lender. The lender required that Sidbec-Dosco maintain a certain minimum capitalization and that Sidbec certify that it would respect this

minimum capitalization requirement for Sidbec-Dosco. According to the GOQ, since Sidbec-Dosco never had much more than the minimum required, it would have been impossible for Sidbec to use Sidbec-Dosco's funds to cover the Normines debts. Therefore, the GOQ claims that the Department's presumption that the absence of the grants would have led Sidbec to raid Sidbec-Dosco is wrong.

The GOQ also asserts that the 1986-1992 grants were recurring in nature and should be expensed in the year of receipt rather than be allocated over the AUL. The GOQ states that at verification it proved that the benefits were not exceptional because Sidbec expected to receive benefits on an ongoing basis. The GOQ notes that the grants were annual disbursements to cover obligations that were guaranteed by the GOQ from the inception of the grants, and that the annual approvals were only required because the amount of interest varied and because the structure of the debt may have been modified. The GOQ states that such approvals were granted routinely. The GOQ also states that there was never any question as to whether the GOQ would cover the debts every year and there never was an instance in which the GOQ did not cover the debt. The GOQ argues that the Department's finding in 1997 Wire Rod was defective because it relied, in part, on a note appearing in Sidbec's financial statements indicating that the GOQ might decide to grant Sidbec less than the full amount of the loan payment due. Sidbec argues that the Department in 1997 Wire Rod erroneously attributed this financial statement note to the entirety of the Normines-related loan obligations of Sidbec when, in fact, the GOQ showed conclusively at verification that this note applied only to the interest (rather than the principal) portions of these loans.

The GOQ also argues that the Department's conclusion in 1997 Wire Rod that Sidbec may have been able to make payments on the debt at some point (and, therefore, the GOQ grants were not automatic) was in error. The GOQ notes that Sidbec was only a holding company with no source of revenue or profits, and no assets. Also, the GOQ re-emphasizes that Sidbec would not have been able to borrow the money from Sidbec-Dosco because of the terms of the minimum capitalization requirements mentioned above.

Petitioners' Arguments:

The petitioners argue that it is the Department's long-standing policy to consider grants that had been tied to part of a company's operations that closed to benefit the remaining production. See, GIA, 58 FR at 37270 and Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod from Italy, 63 FR 40474, 40479 (July 29, 1998). Furthermore, the petitioners argue that the Department routinely attributes subsidies provided to a parent company to its producing subsidiaries as a result of cross-ownership. See preamble to the Department's regulations, 63 FR at 65401. The petitioners assert that the courts have upheld this cross-ownership policy. See, e.g., Fabrique de Fer, 166 F. Supp 2d at 600. Therefore, the petitioners assert, the law is clear that subsidies provided to Sidbec for costs associated with the closing of the Normines operations are attributable to Sidbec's productive subsidiary, Sidbec-Dosco.

The petitioners also rebut the GOQ's argument that Sidbec was not able to use Sidbec-Dosco's assets as if they were its own because of the minimum capitalization requirement in Sidbec-

Dosco's loan agreement. Specifically, the petitioners argue that record evidence indicates that Sidbec-Dosco was capitalized at a level significantly above this minimum capitalization requirement and, therefore, Sidbec could have used its subsidiary's assets to service the loans in question.

Lastly, the petitioners assert that section 351.524(c)(1) of the Department's regulations states that closure grants are normally considered to be non-recurring. The petitioners note that the grants were specifically created for a one-time event, i.e., the closing of Sidbec-Normines, and were outlined in a written government authorization. Also the petitioners note that each grant required a separate application by Sidbec to the GOQ for approval. All of the above are listed in the regulations as criteria for non-recurring grants.

Department's Position:

Consistent with our decision in 1997 Wire Rod, 62 FR at 54975, we continue to find that the 1986-1992 grants benefitted Sidbec-Dosco and, subsequent to privatization, Ispat Sidbec. We agree with the petitioners that the Department's normal practice is to attribute subsidies associated with a closed-down operation to remaining productive operations, and that when the Department finds cross-ownership between companies (as it has found between Sidbec, Sidbec-Normines, and Sidbec-Dosco), it typically attributes subsidies to the sales of the group.

We do not find that the additional information on this record (i.e., the restrictive covenant in the 1989 short-term loan) is sufficient to overturn our previous finding that Sidbec and Sidbec-Dosco are cross-owned. Section 351.525(b)(6)(vi) of the Department's regulations states that cross-ownership is "where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets." As a preliminary matter, we found at verification that the loan agreement with the restrictive covenant was signed in late 1989 and was short-term (i.e., no more than one year in duration). Accordingly, even if we were to accept that this document restricted Sidbec's ability to "use or direct" Sidbec-Dosco's assets, consistent with section 351.525(b)(6)(vi) of the Department's regulations, there is no evidence that this exceptional restriction was effective during any period other than the term of the loan agreement. However, as the petitioners point out, Sidbec-Dosco had significant equity in excess of the required minimum (GOQ 12/3/01 questionnaire response at Exhibit M), which based on cross-ownership, could have been used by Sidbec as if it were its own equity. Therefore, we continue to find that Sidbec and Sidbec-Dosco were cross-owned during the entire period that the GOQ made these grants and that, consistent with section 351.525(b)(6)(iii), it is appropriate to attribute these subsidies to Sidbec-Dosco.

Additionally, we continue to find it appropriate to consider these grants to be non-recurring. Plant closure assistance is expressly mentioned in 19 CFR 351.524(c) as a typical non-recurring subsidy. We agree with the petitioners that the grant was exceptional given that it was specifically for the closure of Sidbec-Normines, and that government authorization was required for each grant which meets the standards indicated in section 351.524(c)(2) of the Department's regulations for a non-recurring grant. (For examples of government authorization see GOQ

supplemental 1/11/02 at exhibit P)

Comment 6–Project Bessemer

Petitioners' Arguments:

The petitioners maintain that the Department should find that Project Bessemer constituted a countervailable benefit to all responding companies, and assign facts available to each of the respondents. The petitioners state that the Department should look to the description of the project as reflected in the audited financial statements for Project Bessemer instead of the description provided by the respondents during verification. The petitioners believe that the audited financial statements show that Project Bessemer could have developed processes to improve the making of wire rod, and not just flat products as the respondents claim.

The petitioners stress that Project Bessemer benefitted from various government subsidies of various forms and these should be considered countervailable because they constitute a financial contribution and provide a benefit, as described in section 771(5)(D) and (E) of the Act. The petitioners also claim the project was de jure specific, as described in section 771(5A)(D)(i) of the Act, because the project was limited to certain steel companies.

The petitioners maintain that the Department should collect more information concerning Project Bessemer to measure the amount of the countervailable benefit or, to the extent that this information is not available due to lack of time or cooperation, the Department should measure the benefit on the basis of facts available.

Ispat Sidbec's Arguments:

Ispat Sidbec notes that Project Bessemer has been terminated and that the types of subsidies alleged do not provide residual benefits. Ispat Sidbec also argues that Project Bessemer was related to hot-rolled strip, which is not used to produce wire rod, and that at verification it was demonstrated that the process did not benefit wire rod.

Ispat Sidbec also counters the petitioners' argument that the audited financial statements of Project Bessemer are the only written, objective documentation on the record concerning the purpose and scope of the project. Ispat Sidbec points to the unanimous joint venture agreement as the best evidence of the intention of the parties and to the scope and purpose of the project.

Ivaco's Arguments:

Ivaco quotes "Project Bessemer–The Canadian Collaborative Thin Strip Casting Project" (presented at the 1993 IISI Technical Exchange Session (May 4, 1993) in Vienna, Austria) from Stelco's submissions which identifies near-net-shape strip casting as a technology needed for cost effective production of flat rolled products. Ivaco believes that this rebuts the petitioners'

comments that Project Bessemer could benefit subject merchandise. Ivaco also comments that the petitioners have not provided information from any knowledgeable steel industry source indicating that direct strip casting could be used in the production of wire rod, and that given the plethora of information on steelmaking, this absence is telling. Ivaco concludes by saying that even if the Department finds this program countervailable, no countervailable benefits would have been received by Ivaco during the POI because the types of benefit received by Ivaco are typically considered as recurring subsidies, and that whatever benefits were received were infinitesimal.

Stelco's Arguments:

Stelco restates that Project Bessemer's technology had absolutely nothing to do with the production of subject merchandise or its inputs. Stelco further notes that this was verified by the Department and the petitioners do not provide any support for their claim that Project Bessemer's technology can be used to produce wire rod.

Department's Position:

The petitioners are relying upon one line in the financial statement for Project Bessemer, the language of which does not explicitly state that the project is limited to flat products. However, based on our review of the joint venture agreement, the presentation at the IISI Technical Exchange Session cited by Ivaco, information submitted on the strip casting process, and the Department's verification findings, we continue to find that Project Bessemer has no connection with the subject merchandise or its inputs. Therefore, any benefits received by the joint venture or the individual partners are not countervailable in the instant investigation.

Comment 7–Ispat Sidbec's freight revenue

Petitioners' Arguments:

The petitioners note that at verification the Department determined that Ispat Sidbec failed to adjust its sales figures downward for any freight revenue on domestic sales or for international freight (port of exit to the customer). Accordingly, the petitioners state that the Department should adjust Ispat Sidbec's sales figures to deduct the domestic freight revenue and international freight revenue from the sales denominator.

Ispat Sidbec's Arguments:

Ispat Sidbec did not respond to this comment.

Department's Position:

In accordance with section 351.525(a) of the Department's regulations, we have deducted amounts billed for freight revenue on domestic sales, and for port of exit to destination freight

revenue on export sales.

Comment 8–Ispat Sidbec's AUL

Petitioners' Arguments:

The petitioners argue that the Department should reject Ispat Sidbec's company-specific AUL and rely upon the 15-year AUL from the IRS tables because Ispat Sidbec's company-specific AUL is distorted. Specifically, the petitioners maintain that the Department should not use the company's calculated AUL because it changed the depreciation period for assets in 1998, revalued assets as a result of the 1993 privatization, and included a one-time exceptional expense along with depreciation expenses in 1992. The petitioners assert that the Department acknowledged in the preamble to its regulations, 63 FR 65348, 65396, that such items cause distortion and, thus, provide a basis for rejecting a company-specific AUL.

Ispat Sidbec's Arguments:

Ispat Sidbec disagrees with the petitioners' argument that the regulations require the rejection of the company-specific AUL when adjustments are made for valid accounting reasons. Ispat Sidbec argues that the Department has previously accepted company-specific AULs when such adjustments are clearly explained. (See, Industrial Phosphoric Acid from Israel: Final Results of Countervailing Duty Administrative Review, 64 FR 2879 (January 19, 1999) ("Israeli IPA") in which respondent had a surge in asset values following a merger. The Department accepted the company-specific AUL, stating that the respondent "sufficiently explained the changes that occurred in its depreciable productive assets and regular depreciation expenses.") In this case, Ispat Sidbec contends that it explained each adjustment fully at verification.

For the Preliminary Determination, Ispat Sidbec states that the Department used the company-specific AUL that the Department calculated in 1997 Wire Rod. Ispat Sidbec points out that the company-specific AUL it submitted for this investigation uses the Department's calculations and methodology from 1997 Wire Rod (but uses data from the 10-year period including and prior to the POI). Finally, Ispat Sidbec notes that the company-specific AUL is similar to the IRS table AUL and, thus, is not aberrational and, in fact, accurately reflects the actual depreciation record of the company.

Department's Position:

As noted by the petitioners, in the preamble to its regulations, 63 FR at 65395-7, the Department lists extraordinary asset write-downs and the sale of a company as potential causes of distortion to a company-specific AUL that might lead the Department to reject such an AUL. While the "events" by themselves are not cause for rejection of the company-specific AUL, as noted by Ispat Sidbec in citing Israeli IPA, such events may give rise to distortion in a company's reported AUL. See preamble to the Department's regulations, 63 FR at 65395-7. For example, the Department has rejected company-specific AULs when it has found substantial discontinuity in

the annual AUL figures preceding and subsequent to such events. See, e.g., Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils from Italy, 64 FR 15508, 15521 (March 31, 1999), where the Department found that discontinuity in annual AULs corresponding to changes in ownership provided sufficient grounds to reject a company-specific AUL. To determine whether the three events listed by the petitioners (change of depreciation period for assets in 1998, revaluation of assets as a result of the 1993 privatization, and inclusion of a one-time exceptional expense along with depreciation expenses in 1992) caused significant discontinuity in Ispat Sidbec's AUL, we calculated the annual AUL for the years 1991-2000. In reviewing this data, we note significant discontinuity in the annual AULs directly corresponding to the time of these three events. Accordingly, we have rejected Ispat Sidbec's company-specific AUL and, instead, used the 15-year IRS table figure in accordance with section 351.524(d)(2)(i) of the Department's regulations.

Comment 9–Ispat Inland's Sales

Ispat Sidbec's Arguments:

Ispat Sidbec argues that it is the parent company to Ispat Inland, a producer of steel products located in the United States, and that Ispat Inland's sales should be included in the denominator of the subsidy calculation. Ispat Sidbec states that, in keeping with the Department's practice that all the alleged subsidies flowed through the parent to all members of the consolidated group, consistency requires that the Department find that benefits from any subsidies found for Ispat Sidbec must per force flow through to its subsidiary, Ispat Inland. Ispat Sidbec also claims that North America should be treated as one country since trade is entirely free across the U.S.-Canada border and, therefore, section 351.525(b)(7) of the Department's regulations, dealing with transnational subsidies, should not apply.

Petitioners' Arguments:

The petitioners contend that section 351.525(b)(7) of the Department's regulations require it to exclude non-domestically produced goods from the denominator unless respondents can demonstrate that the subsidy was intended to benefit more than domestic production. The petitioners contend that Ispat Sidbec has not shown that the subsidy was meant to benefit its foreign subsidiary since Ispat Inland was purchased after the date the original subsidies were bestowed. The petitioners cite to Final Affirmative Countervailing Duty Determination: Certain Hot Rolled Lead and Bismuth Carbon Steel Products from France, 58 FR 6221, 6231 (January 27, 1993), as a case in which the Department excluded foreign production when it could determine that the subsidy was tied to domestic production only.

The petitioners also mention that the Department is correct in including in the numerator subsidies from Ispat Sidbec's related companies in Canada but not from outside of Canada, in accordance with section 351.525(b)(7) of the Department's regulations.

Department's Position:

We have not included Ispat Inland's sales in the denominator of the ad valorem subsidy rate calculation. We disagree with Ispat Sidbec that the Department should consider Canada and the United States as a single country and, according to Ispat Sidbec, obviate the need to consider the standard for attribution of subsidies to multinational firms as set forth in section 351.525(b)(7) of the Department's regulations.

Section 351.525(b)(7) of the Department's regulations sets forth an affirmative obligation to "{demonstrate} that the subsidy was tied to more than domestic production." In the preamble to its regulations, 63 FR at 65403, the Department states that to attribute subsidies to multinational operations, a respondent must supply "affirmative evidence that the purpose of the subsidy was to benefit more than domestic production." Ispat Sidbec has not provided any information that the purpose of the subsidies was, at least in part, to benefit U.S. production. Therefore, we have continued to attribute the subsidies in question over the operations of Ispat Sidbec and its affiliates in Canada.

Comment 10–Deitcher Brothers Sales

Ispat Sidbec's Arguments:

In its case brief, Ispat Sidbec reverses its previous position that cross-ownership does not exist between it and Deitcher Brothers. Ispat Sidbec now maintains that because Deitcher Brothers is owned 50 percent by Ispat Sidbec the two companies should be collapsed and Deitcher Brothers' sales should be included in the total sales denominator. Ispat Sidbec also points out that Deitcher Brothers is included in Ispat Sidbec's consolidated financial reports.

Petitioners' Arguments:

The petitioners assert that Ispat Sidbec's change of position is untimely as the record was closed for submission of new information seven days before verification, that this change is not a minor clarification or correction, and the Department did not have the opportunity to examine Ispat Sidbec's revised position at verification.

Department's Position:

Ispat Sidbec did not provide any supporting documentation to show that it can use or direct the individual assets of Dietcher Brothers pursuant to 19 CFR 351.525(b)(6)(vi). The record only contains the information provided for the Preliminary Determination which shows that Ispat Sidbec does not have majority voting ownership of Dietcher Brothers. Therefore, the Department has removed Dietcher Brothers sales in the denominator used to calculate the ad valorem subsidy rate for Ispat Sidbec.

Comment 11–Calculation of Deposit Rate

Ispat Sidbec's Arguments:

Ispat Sidbec reasons that the 1988 debt-to-equity conversion and the 1986-1988 GOQ grants to Sidbec are not countervailable because any benefits received will have been fully amortized before the first administrative review period (when using the company-specific AUL rather than the 15-year, IRS-table AUL). Whether or not the Department finds these programs countervailable, Ispat Sidbec states that no duties will ever be assessed as a result of the debt-to-equity conversion or the 1986-1988 grants and, therefore, these subsidies should not be included in the deposit rate.

Ispat Sidbec argues that the full amortization of the benefit from these programs prior to the first review period is tantamount to a 'program-wide change,' and, thus, the deposit rate should be adjusted in accordance with section 351.526 of the Department's regulations. Ispat Sidbec argues that this satisfies the conditions in section 351.526(b) for a program-wide change. Specifically, Ispat Sidbec claims that it is the only company affected by these two programs and, therefore, it represents all of the firms that could benefit. Also, Ispat Sidbec claims that the end of the programs' benefit is the result of official government action because the debt-to-equity conversion was a one time event, and the last GOQ grant for Sidbec's mining losses was granted in 1992. Lastly, because the government sold Sidbec-Dosco, Ispat Sidbec argues that any further debt-to-equity conversions are impossible.

Petitioners' Arguments:

The petitioners argue that the debt-to-equity conversion and grants can be countervailed because they will not be fully amortized until after the first administrative review when using the 15-year AUL that the Department used in the Preliminary Determination. Therefore, these subsidies should be included in the cash deposit rate.

The petitioners also refute the 'program-wide change' argument made by Ispat Sidbec. The petitioners state that, to the best of their knowledge, the Department has never treated the termination of a benefit as a result of the expiration of the allocation period as a program-wide change and that doing so would set a dangerous precedent. The petitioners state that the Department has strictly interpreted this regulation in other cases. See, e.g., Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Korea, 66 FR 47008, 47013 (September 10, 2001). The petitioners also argue that the expiration of the allocation period is not tantamount to, or in this case accompanied by, an official act as required by the Department's regulations.

Department's Position:

We agree with the petitioners. According to sections 351.526(a) and (b) of the Department's regulations, in determining the appropriate cash deposit rate, the Department may only take into account a program-wide change that is not limited to an individual firm and that is effectuated by an official act, such as the enactment of a statute, regulation, or decree. That these programs

were initially approved as one-time events, does not indicate whether they will be repeated in the future. In fact, there is nothing on the record indicating that the GOQ is prohibited from providing additional equity infusions or grants to cover losses in the future to Ispat Sidbec or other companies. The Department has also rejected similar arguments in previous cases. (See, e.g., Stainless Steel Plate in Coils From Belgium: Final Results of Countervailing Duty Administrative Review, 66 FR 45007 at Comment 4 (August 27, 2001), where the Department rejected the respondent's claim that the cash deposit should be adjusted downward because a subsidy would be fully allocated before the beginning of the next review period.)

Comment 12–Stelco's Energy Efficiency and Conservation Programs

Petitioners' Arguments:

Petitioners argue that the Department should countervail government incentives provided to Stelco for energy efficiency and conservation programs from 1990 through 1998. Petitioners claim that Stelco did not cooperate in the investigation because it failed to provide information expressly requested by the Department on multiple occasions on the government assistance for energy efficiency and conservation programs. Specifically, petitioners state that the Department has provided ample opportunity for Stelco, through the Department's original questionnaire and supplemental questionnaires and at verification, to respond to the Department's request for information on government incentives for energy programs and Stelco failed to provide the requested information. Petitioners urge the Department to apply adverse facts available to conclude that Stelco received non-recurring countervailable subsidies from the government.

Stelco's Arguments:

Stelco claims that its verification report confirms the Department's Preliminary Determination that the Government of Canada did not provide any financial contributions in support of its energy projects. Therefore, Stelco urges the Department, in its final determination, to conclude that Stelco did not receive any countervailable subsidies with respect to the energy projects.

Department's Position:

We disagree with the petitioners that Stelco failed to provide information related to government incentives for energy efficiency and conservation programs. At verification, Stelco stated that it participates in the Canadian Industrial Program for Energy Conservation, a joint governmental and industrial organization which was founded after the 1970's oil crisis. See June 27, 2002, memorandum to file regarding Results of Stelco, Inc. Verification. Stelco also stated that it is a member of the "Voluntary Climate Challenge and Registry Program" ("VCR") which collects action plans for energy conservation and the reduction of greenhouse gas emissions. According to Stelco, membership in VCR is voluntary and members make a commitment to reduce greenhouse gases under their own initiative. Further, members of VCR benefit from the public

recognition given for their efforts and from the avoidance of federal regulations. However, Stelco emphasized that the only financial benefit that Stelco receives as a result of these initiatives is the savings resulting from increased energy efficiency. At verification, on reviewing Stelco's accounting records, we did not see any indication that it received any other financial contributions related to energy projects.

Comment 13–New Subsidy Allegations

Petitioners' Arguments:

The petitioners maintain that the Department failed to verify information regarding certain alleged new subsidies that the Department addressed at the time of its Preliminary Determination. The petitioners state that the Department found at the Preliminary Determination that these alleged subsidies were either not countervailable or that there was no basis to investigate further. The petitioners state that while the Department analyzed these allegations for the Preliminary Determination, the Department failed to verify whether its preliminary findings were correct, and that such decision making should not stand. The petitioners maintain that section 782(i) of the Act states that the Department "shall" verify "all information relied upon" in making a final determination. The petitioners maintain that this obligation extends to negative and affirmative preliminary findings, and that the Department fulfilled this obligation with regard to some negative findings, e.g., Project Bessemer and the Resource Allowance, but did not do so for the alleged new subsidy programs. While confirming that the Department is not required to verify every piece of information it relies upon, the petitioners argue that the information in question was significant and critical. The petitioners contend that it was clear from petitioners' and respondents' submissions that the alleged subsidies raised significant and contentious issues, and that the Department recognized that these were sufficiently significant to justify a separate analysis memorandum at the Preliminary Determination. See, February 1, 2002, Memorandum to File regarding "Petitioners' Allegations Regarding Ispat's Purchase of Sidbec Dosco" ("New Subsidy Allegations Memo").

The petitioners also argue that the Department's cursory dismissal of these allegations is contrary to law. The petitioners state that the CIT recently found that the Department has an independent statutory obligation to investigate potentially countervailable subsidies discovered during the course of an investigation, regardless of how the Department becomes aware of these subsidies. See, Allegheny Ludlum Corp. v. United States, 112 F. Supp. 2d 1141, 1151 (CIT 2000) ("Allegheny Ludlum"). The petitioners also state that in Bethlehem Steel Corp. v. United States, 140 F. Supp 2d 1354, 1360 (CIT 2001) ("Bethlehem Steel"), the CIT faulted the Department for dismissing subsidy allegations based on "assumptions" and "the mere possibility" that certain events would occur that, in turn, would render the alleged subsidy non-countervailable. (See also, AG der Dillinger Huttenwerke v. United States, 193 F. Supp. 2d 1339, 1348-49 (CIT 2002) ("Dillinger Huttenwerke"), where according to petitioners, the CIT faulted the Department for failing to consider evidence regarding the likelihood of future subsidization and declining to seek additional evidence in a sunset review.) In light of these decisions, the petitioners maintain that the Department must completely reconsider its preliminary findings. The petitioners contend that

the Department's preliminary conclusions are belied by the facts, and that the record contains sufficient evidence to find these programs countervailable.

Because of the proprietary nature of the petitioners' factual analysis of their new subsidy allegations, we have summarized (and responded to) the petitioners' specific points in a separate analysis memo, dated August 23, 2002.

Respondents' Arguments:

Ispat Sidbec argues that the petitioners are mistaken that the Department must investigate and verify virtually every allegation made by a petitioner. Ispat Sidbec states that the Department is not required to investigate and verify an allegation when it is clear on its face that an allegation is not countervailable. Ispat Sidbec and the GOQ maintain that, in the Preliminary Determination, the Department carefully considered each of the petitioners' allegations and determined that the alleged programs either were not countervailable or that there was no basis for further investigation. See New Subsidy Allegations Memo. The GOQ states that the petitioners did not cite to any new facts supporting reconsideration of those allegations.

Ispat Sidbec also argues that the three court cases cited by petitioners are fact-specific, and do not lead to the conclusion that the Department must investigate and verify an allegation when the Department makes a determination that it lacks merit. Ispat Sidbec states that Dillinger Huttenwerke concerned a sunset review in which the Department assumed the rate of subsidization that would prevail in the absence of an offsetting duty. Ispat Sidbec argues that in this case the Department assumed nothing, but instead analyzed the petitioners' allegations and found them insufficient to merit further investigation. According to Ispat Sidbec, in Allegheny Ludlum and in Bethlehem Steel, the court described information found during the investigation that indicated the existence of a countervailable subsidy, and that this information "on its face" should have triggered an investigation. However, Ispat Sidbec argues that the Department determined in the New Subsidy Allegations Memo that the record evidence "on its face" indicates that countervailable subsidies do not exist. Therefore, Ispat Sidbec concludes, the cases cited by petitioners do not require that the Department go beyond the analysis conducted in the New Subsidy Allegations Memo.

Because of the proprietary nature of the respondents' rebuttal of petitioners' factual analysis, we have summarized (and responded to) the respondents' specific points in a separate analysis memo, dated August 23, 2002.

Department's Position:

We disagree with the petitioners that the Department is required by section 782(i) of the Act and its corresponding regulation, 19 CFR 351.307, to verify information regarding certain alleged subsidies after the Department has determined that the allegations were insufficient to warrant further investigation. Section 782(i) of the Act and the corresponding regulation provide that the Department shall verify all information relied upon in making a final determination in a

countervailing duty investigation. Unlike the Project Bessemer and Resource Allowance programs, the Department did not initiate on these alleged programs. See Notice of Initiation of Countervailing Duty Investigations: Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Germany, Trinidad and Tobago, and Turkey, 66 FR 49931, 49935 (October 1, 2001).

The petitioners submitted these new subsidy allegations subsequent to the initiation of this investigation and upon receiving the petitioners' submission, the Department carefully reviewed the alleged new subsidy programs and concluded that there was no basis to investigate the allegations further. See New Subsidy Allegations Memo. The evidence on the record did not "on its face" show that countervailable subsidies existed under the alleged new subsidy programs. Further, the petitioners did not provide any additional factual basis for the allegations. The Department is not required to investigate and verify its determination not to initiate an investigation with respect to the alleged new subsidy programs when the petitioners do not provide evidence supporting their claims of countervailability.

The petitioners cite Allegheny Ludlum, Bethlehem Steel, and Dillinger Huttenwerke as recent court decisions in which the Department failed to properly carry out its investigative function by summarily dismissing allegations of countervailable subsidies. However, in this investigation, the Department did not summarily dismiss the petitioners' allegations, but instead carefully considered the allegations and found that the petitioners had not "allege{d} the elements necessary for the imposition of the duty imposed by section 701(a) {of the Act}, and which is accompanied by information reasonably available to petitioner supporting those allegations."

We also agree with Ispat Sidbec that these rulings are fact specific and are distinguishable from this investigation. In Allegheny Ludlum, the issue concerned a countervailable subsidy discovered during the course of the Department's investigation which the Department had not investigated. 112 F. Supp. 1141, 1150-51. The CIT ruled that a remand was necessary for the Department to determine if the Department had a legal obligation to investigate the alleged subsidy. Id. Further, in Bethlehem Steel, the CIT found that the Department did not investigate an allegation that "on its face" appeared to meet the statutory requirements. 140 F. Supp. 2d. 1354, 1360. The court also found that the alleged programs "reasonably appear countervailable." Id.

In Dillinger Huttenwerke, the CIT found that the Department, in the absence of an offsetting rate, made assumptions with respect to the rate of subsidization that was likely to prevail. 193 F. Supp. 2d. 1339, 1348-49. The Department did not seek additional evidence in making its determination. By contrast, in this investigation, the Department did not make any assumptions regarding the alleged new subsidies. Rather, the Department evaluated the record evidence regarding the alleged new subsidies and determined that the evidence did not support the petitioners' claim that these were countervailable subsidies and, therefore, did not warrant further investigation.

Lastly, we have re-examined the petitioners' arguments in their case brief and continue to determine that the petitioners' new subsidy allegations do not provide a basis to investigate nor to

impose countervailable duties. As a consequence of the proprietary nature of the information necessary for a detailed analysis of the new subsidy allegations, please refer to the separate analysis memo, dated August 23, 2002, for further discussion of these issues.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting all related margin calculations accordingly. If these recommendations are accepted, we will publish the final determination in the Federal Register.

AGREE ____ DISAGREE ____

_____
Faryar Shirzad
Assistant Secretary for
Import Administration

_____
(Date)